

**COMMONSPIRIT HEALTH
ACCOUNTABLE CARE ORGANIZATION AND CLINICALLY INTEGRATED NETWORK
ADMINISTRATIVE POLICY**

SUBJECT: MSSP Marketing Materials and Voluntary Alignment	POLICY NUMBER: Corporate Responsibility PH-007
EFFECTIVE DATE: July 1, 2021	ORIGINAL EFFECTIVE DATE: July 1, 2021
REPLACES: CHI Corporate Responsibility Policy No. 6, ACO Marketing Materials and Activities Related to Medicare Shared Savings Program	Dignity Health Policy: Clinical Integration – Medicare Shared Savings Program Marketing Materials and Activities

- Accountable Care Organizations (ACO) in the Medicare Shared Savings Program (MSSP)
- Clinically Integrated Networks (CIN)

PURPOSE

The purpose of this policy is to outline the marketing materials and activity guidelines and approval process for MSSP to ensure compliance with CMS requirements. These are defined in the Medicare Shared Savings Program Final Rule.

POLICY

It is the policy of the MSSP that all general audience materials are compliant with any relevant regulatory requirements, and accurately reflect the opinions, position, and strategy of the MSSP. The MSSP shall comply with CMS' *Guidelines for the MSSP ACO Marketing Materials* as published on the SSP ACO Portal and the MSSP marketing requirements listed at 42 C.F.R. §425.310.

1. MSSP does not use and prohibits MSSP Related Individuals from using MSSP Related Marketing Materials or Activities until reviewed and approved in their entirety by the MSSP Marketing Contact and, when necessary, CMS.
2. Any Marketing Materials and Activities intended for distribution to potential or actual MSSP beneficiaries are required to be pre-approved by CMS. There are no exceptions to this requirement.
3. Marketing Materials or Activities include, but are not limited to, general audience materials such as brochures, advertisements, outreach events, letters, web pages, mailings, social media, or other activities conducted by or on behalf of the MSSP or its Participants or Providers/Suppliers, when used to educate, notify, or contact beneficiaries or Providers/Suppliers regarding the Medicare Shared Savings Program.

4. The following beneficiary communications are not considered to be marketing materials and activities by CMS:
 - A. Certain beneficiary materials that are informational (for example, information regarding care coordination);
 - B. Materials that cover beneficiary-specific billing and claims issues or other specific individual health related issues;
 - C. Educational information on specific medical conditions (for example, flu shot reminders);
 - D. Written referrals for health care items and services; and
 - E. Materials or activities that do not constitute “marketing” under the HIPAA Privacy Rule.

5. The MSSP shall follow CMS guidelines for MSSP marketing materials when creating Marketing Materials and Activities including:
 - A. Inclusion of required information;
 - B. Prohibition on the use of inaccurate or misleading information including use of prohibited phrases and terms;
 - C. Adherence to Federal Plain Language Guidelines; and
 - D. Required font size.

6. MSSP Communications must not be used in a discriminatory manner and should adhere to Federal Plain Language Guidelines where possible.

AFFECTED AREAS OR DEPARTMENTS

CommonSpirit Health Accountable Care Organizations participating in the MSS

PROCEDURE OR PROCESS

1. MSSP Participants and its Providers/Suppliers shall submit all Marketing Materials and Activities intended for distribution to MSSP beneficiaries to the appropriate Marketing Contact. The Marketing Contact shall review such materials and discuss any recommended edits or revisions with the submitting MSSP Participant or Provider/Supplier, as applicable.

2. The Marketing Contact shall review the proposed Marketing Materials and Activities with the appropriate Management Team for approval.

3. Any materials which meet the definition of MSSP Related Marketing Materials or Activities will be submitted to CMS in accordance with the requirements of the CMS MSSP Final Rule. These materials may be used following their submission to CMS if it is not disapproved within CMS’ 5-day review period.
 - A. If CMS disapproves the material after the 5-day review period, the MSSP must immediately discontinue use of the marketing materials or activities.
 - B. Any changes to existing materials will trigger an additional review by the Marketing Contact. Any changes to CMS-approved materials and activities must be resubmitted to CMS and approved before use.

4. Upon receipt of CMS approval, the Marketing Contact shall coordinate publication, distribution or initiation of Marketing Materials and Activities with the submitting MSSP Participant or Provider/Supplier.
5. Any template materials provided by CMS may be utilized by the MSSP immediately upon filing with CMS. These template materials may not be changed in any way.
6. As required, the MSSP and any MSSP Related Individuals will obtain prior approval from CMS for the publication or release of any press release, external reports or statistical/analytical material that materially and substantially references the MSSP's participation in the MSSP or the MSSP's financial arrangement with CMS. Examples of such reports include, but are not limited to papers, articles, professional publications, speeches and testimony.
 - A. All external reports and statistical/analytical material that are subject to this section must include the following statement on the first page: "The statements contained in this document are solely those of the authors and do not necessarily reflect the view or policies of CMS. The authors assume responsibility for the accuracy and completeness of the information contained in this document."
7. MSSP Communications may not contain inaccurate or misleading information, including but not limited to:
 - A. Language suggesting that beneficiaries are required to see providers only within the MSSP or are in any way prohibited from seeing providers outside of the MSSP.
 - B. Language suggesting that beneficiaries enroll or are participating in MSSPs.
 - C. Language should be clear that it is the provider, not the beneficiary, which is participating in the MSSP.
 - D. Language suggesting that CMS endorses one MSSP over another.
 - E. Language suggesting a Shared Savings Program MSSP is in any way superior to other MSSPs or other types of MSSPs, or that the providers participating in the MSSP are superior to other providers participating in other MSSPs.
8. The MSSP Marketing Contact, or his or her designee, shall maintain a log of all material approvals and a library of all written and electronic materials in accordance with CommonSpirit Health's Population Health Record Retention Policy.

Voluntary Alignment

1. Voluntary Alignment Communications. MSSP Related Individuals may directly communicate with beneficiaries regarding Voluntary Alignment.
 - A. Materials will be submitted to the Marketing Contact and CMS as required and will not offer gifts, cash, or other remuneration as inducements for:
 - i. Completing Voluntary Alignment, or

- ii. Receiving items or services from, or remaining in, a MSSP or with MSSP Providers/Suppliers in a particular program or receiving items or services from MSSP Participants or Providers/Suppliers.
- B. MSSP Related Individuals may answer questions from beneficiaries regarding Voluntary Alignment, but may not complete the online form on behalf of any beneficiary.
- C. If a beneficiary has a question about how to make a change to their Voluntary Alignment selection, they should be directed to call the 1-800-MEDICARE or visit MyMedicare.gov.

DEFINITIONS

Beneficiary: Medicare fee-for-service beneficiary attributed to the ACO by CMS.

Medicare Shared Savings Program (MSSP): Medicare Shared Savings Program, established under section 1899 of the Social Security Act.

MSSP Activities: Activities related to promoting accountability for the quality, cost, and overall care for a population of attributed Medicare fee-for-service Beneficiaries, including managing and coordinating care, encouraging investment in infrastructure and redesigned care processes for high quality and efficient service delivery; or carrying out any other obligation or duty of the ACO under the Medicare Shared Savings Program.

MSSP Participant: An ACO entity identified by a Medicare-enrolled billing TIN through which one or more providers/suppliers bill Medicare. The providers/suppliers must be included on the list of ACO participants that is required under 42 C.F.R. § 425.118.

MSSP Provider/Supplier: An individual or entity that: (1) is a provider or supplier under Medicare regulations; (2) is enrolled in Medicare; (3) bills for items and services furnished to Medicare fee-for-service beneficiaries during the agreement period under a Medicare billing number assigned to the TIN of an ACO participant; and (4) is included on the list of ACO providers/suppliers that is required under 42 C.F.R. §425.118.

MSSP Related Individual: ACO officers, directors, employees, Participant, Provider/Supplier, or any other individual or entity providing functions or services related to ACO Activities.

Voluntary Alignment: the process that lets Medicare FFS beneficiaries select, or “voluntarily align” with, a primary clinician. MSSPs must notify beneficiaries of their ability to, and the process by which, he or she may identify or change the person he or she chose for the purposes of voluntary alignment.

REFERENCES

- National Association of ACOs (NAACOS) ACO Compliance Program Policies and Procedures Manual - MSSP

STATUTORY/REGULATORY AUTHORITIES

- 42 C.F.R. §452.20 Definition of *Marketing materials and activities*
- 42 C.F.R §452.310 Marketing Requirements
- CMS *Guidelines for the MSSP ACO Marketing Materials and Activities*
- 45 C.F.R. §164.501 and §164.508(a)(3)(i)